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SUMMARY OF BERMAN V. PARKER

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You asked for a summary of *Berman v. Parker*, 348 U.S. 26 (1954).

SUMMARY

In *Berman v. Parker*, the U.S. Supreme Court considered the federal government's eminent domain power under the Fifth Amendment's takings clause. The case involved Washington, D.C. legislation to redevelop a blighted section of the city. A property owner objected to the government's taking of a piece of property that was not blighted and would be given to another private party as part of the redevelopment project.

The Court ruled that the government can transfer property from one private party to another as part of a redevelopment plan that serves a public purpose (i.e., to promote the general physical, aesthetic, sanitary, or economic quality of an area) under the Fifth Amendment and the constitution only requires payment of just compensation to a property owner.

BACKGROUND

In the 1940's and 50's, several areas of Washington, D.C. exhibited substantial urban blight (i.e., buildings in serious disrepair, and a pervasive lack of utilities, sanitation, and hygiene). The District of Columbia Redevelopment Act of 1945 empowered an agency to acquire real property in D.C., by eminent domain and otherwise, and transfer

that property to a private development company, for “the redevelopment of blighted territory in [D.C.] and the prevention, reduction, or elimination of blighting factors or causes of blight” (*id.* at 29). With proper approval, the agency sought to implement a redevelopment plan for an area of Southwest D.C. that included the plaintiffs’ property, a lot with a department store that was not blighted. The plaintiffs sought to enjoin the agency from condemning their lot by eminent domain, claiming that the act violated the Fifth Amendment’s provisions that (1) “[n]o person shall be deprived of...property, without due process of law” and (2) “nor shall private property be taken for public use, without just compensation” (*id.* at 31). A three-judge federal District Court panel dismissed the plaintiffs’ complaint, but held that the agency could only acquire and transfer property to clear and prevent slums, that is housing “injurious to the public health, safety, morals and welfare” (*id.* at 31).

ISSUES

The Supreme Court considered whether the Fifth Amendment allows the government to:

1. transfer property from one private party to another and change that property’s use from one private use to another and
2. condemn property that does not exhibit blight as part of a broad and comprehensive plan to prevent, reduce, or eliminate blight from an area.

ANALYSIS

The Fifth Amendment’s takings clause bars the government from taking private property “for public use, without just compensation.” Here, the Court agreed with the District Court panel’s understanding of “public use” to include uses that serve a public purpose. Such uses include traditional public facilities like streets, utilities, recreational facilities, and schools (*id.* at 30), and those private uses that promote “public safety, public health, morality, peace and quiet, [and] law and order” (*id.* at 32).

The Court found that the promotion of these ends falls within the traditional scope of the state’s police powers. In this case, Congress is the “state” because Congress governs D.C. and has “all the legislative powers which a state may exercise over its affairs (at 31-32). Because the state can regulate private activities as an exercise of its police powers, it can regulate the private uses of property within the state, even to the

point of condemning one private use and establishing another private use. The Court noted that “the means of executing the [redevelopment] project are for [the state] and [the state] alone to determine, once the public purpose has been established” (*id.* at 33).

The District of Columbia Redevelopment Act of 1945 authorized the agency charged with acquiring land for redevelopment to do so (1) in accordance with a comprehensive redevelopment plan created by the National Capital Planning Commission and (2) for “the redevelopment of blighted territory in [D.C.] and the prevention, reduction, or elimination of blighting factors or causes of blight” (*id.* at 29).

Here, the Court disagreed with the District Court panel’s narrow reading of these authorizations that restricted the agency to acquiring and redeveloping blighted areas on a building-by-building basis. The Court rejected the argument that the standards set for the agency were so indefinite as to be arbitrary. Rather, the Court deferred to Congress’s purpose to “redesign the whole area so as to eliminate the conditions that cause slums” (*id.* at 34) and noted that “[i]f owner after owner were permitted to resist these redevelopment programs on the ground that his particular property was not being used against the public interest, integrated plans for redevelopment would suffer greatly” (*id.* at 35).

The Court decided that “[o]nce the question of the public purpose has been decided, the amount and character of land to be taken for the [redevelopment] project and the need for a particular tract to complete the integrated plan rests in the discretion of the legislative branch (*id.* at 35-36). The Court concluded, noting that “[t]he rights of [the] property owners are satisfied when they receive that just compensation which the Fifth Amendment exacts as the price of the taking” (*id.* at 36).

HOLDINGS

The Court unanimously held that:

1. once the state determines that the post-redevelopment use of some private property has a public purpose, it is free to employ reasonable means to see that the purpose is promoted;
2. using reasonable means includes condemning and transferring property that is not blighted when that property is within an area of planned redevelopment, taking full title to condemned property, and transferring condemned property to a private redevelopment company or companies; and

3. the constitutional rights of owners whose property is condemned are satisfied when they receive just compensation as required by the Fifth Amendment.

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